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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :22.03.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)Nos.865 and 866 of 2016
and
C.M.P(MD)Nos.5169 and 5170 of 2016
and
C.M.P(MD)Nos.11561 and 11562 of 2017

W.A(MD)No.865 of 2016:

Tamil Nadu Wakf Board,
through its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Seedhakadi Nagar,
Chennai - 600 001.

.. Appellant/1st Respondent

Vs.

1.Uduman Mohideen
2.Hasan Makdhoom

.. 1st respondent/Writ Petitioner
.. 2nd respondent/2nd respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent,
to set aside the order made in W.P(MD)No.12143 of 2014 dated
29.04.2016 by allowing the above writ appeal.

Prayer in WP(MD). 12143/ 2014 :

Writ Petition is filed under Article 226 of the
Constitution of India, praying this Court To issue a Writ of
Certiorarified Mandamus, calling for the records of the 1st
Respondnet in Se.Mu.NO. 6211/12/A4/TNV dated 27.06.2014 quash the
same and consequently handover the charge of Muttavalli of Nayna
Mohammed Kuthba Pallivasal Wakf Kadayanallur, Tirunelveli District
to the petitioner.

For Appellant	: Mr.K.K.Senthil
For R-1	: Mr.AR.L.Sundaresan, Senior Counsel for Mr.S.Y.Masood
For R-2	: Mr.M.Mahaboob Athiff

W.A(MD)No.866 of 2016:

Hasan Makdhoom

.. Appellant/2nd Respondent

Vs.

1.Udhuman Mohideen

.. 1st respondent/Petitioner



2. Tamil Nadu Wakf Board,
through its Chief Executive Officer,
No.1, Jaffar Sarango Street,
Seedhakadi Nagar,
Chennai - 600 001.

.. 2nd respondent/1st respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order made in W.P(MD)No.12143 of 2014 dated 29.04.2016 and dismiss the Writ Petition.

Prayer in WP(MD). 12143/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records of the 1st Respondnet in Se.Mu.NO. 6211/12/A4/TNV dated 27.06.2014 quash the same and consequently handover the charge of Muttavalli of Nayna Mohammed Kuthba Pallivasal Wakf Kadayanallur, Tirunelveli District to the petitioner.

For Appellant	: Mr.M.Mahaboob Athiff
For R-1	: Mr.AR.L.Sundaresan, Senior Counsel for Mr.S.Y.Masood
For R-2	: Mr.K.K.Senthil

COMMON JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.]

By consent, both the Writ Appeals, are taken up for final disposal and disposed of by this common judgment, for the reason that both the writ appeals are preferred against the order dated 29.04.2016 made in W.P(MD)No.12143 of 2014.

W.A(MD)No.865 of 2016:

2. The first respondent in the said writ petition, namely, Tamil Nadu Wakf Board, is the appellant herein and aggrieved by a portion of the order, in and by which, a consequential direction was given, directing the handing over the charge of Muthavalli of 'Naina Mohammed Kuthba Pallivasal', Kadayanallur, Tirunelveli District, in favour of the writ petitioner/first respondent, the present writ appeal is filed.

W.A(MD)No.866 of 2016:

3. The second respondent in the writ petition, aggrieved by the entirety of the order dated 29.04.2016 made in the said writ petition, has filed the writ appeal.

4. The facts leading to the present litigation have been narrated in detail and in extension in the impugned order dated



29.04.2016 made in W.P(MD)No.12143 of 2014 and therefore, it is unnecessary to restate the entire facts, except to cull out the relevant facts, which are necessary for the disposal of these writ appeals.

5. As per the proforma report of the Assistant Commissioner, Wakfs, Collectorate, Tirunelveli, dated 15.12.1956, the Rule of Succession to the office of the Muthavalli is hereditary according to custom. The father of the writ petitioner, namely, O.M.S.Abdul Basith Aldi Sahib, had filed W.A.No.848 of 1986 against the father of the appellant in W.A(MD)No.866 of 2016, namely, O.M.S.Shaia Udaram Alim Sahib and the Tamil Nadu State Wakf Board, represented by its Secretary and the issue arised for consideration in the said writ appeal was "whether the custom of hereditary succession by primogeniture would apply to the wakf in question".

6. A Division Bench of this Court after taking note of Section 42 of the Wakf Act, 1995, has observed as follows:

".... If really the Rule of Primogeniture is applied, one sat of consequence would follow and if it is not established, the other consequences would follow. In these circumstances, we are of the view that though there are allegations to this effort in the affidavit filed in support of the writ petition, that has been denied by the second respondent (the present appellant) in paragraph :1 if the counter affidavit. Therefore, the disputed duration of fact as to the custom of primogeniture had to be established in a Civil suit.

We direct the first respondent - writ petitioner to file a suit within one month from today. As and when such a suit is filed, it shall be disposed of with utmost expedition, preferably within nine months from the date of filing of the suit. The Status Quo as on today shall prevail till the disposal of the suit. Till then, the Wakf Board shall stay off its hands concerning the appointment of Muthavalli.

We make it clear that we have not expressed any opinion on the merits of the case.

The writ is ordered accordingly. No Costs."

7. Accordingly, the father of the appellant in W.A(MD)No.866 of 2016, namely, O.M.S.Shaia Udaram Alim Sahib, filed O.S.No.138 of 1989 on the file of the Court of Subordinate Judge at Tenkasi, against the father of the writ petitioner, namely, O.M.S.Abdul Basith Aldi Sahib, to declare that the succession is by primogeniture and for permanent injunction restraining the defendant from interfering with the management of the wakf by the plaintiff as a Muthavalli.



8. The trial Court vide judgment and decree dated 05.08.1983, had dismissed the said suit and challenging the legality of the same, A.S.No.1024 of 1993 has been preferred before this Court and it is pending.

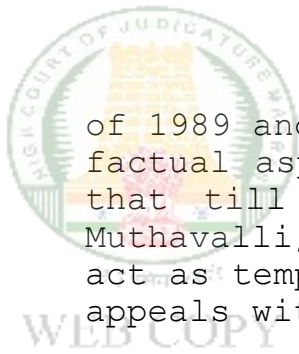
9. The appellant in W.A(MD)No.865 of 2016, namely, Tamil Nadu Wakf Board, vide resolution dated 21.08.2013, has considered the issue relating to the appointment of Muthavalli in respect of 'Naina Mohammed Periya Kuthba Pallivasal' and after taking note of all the materials and the rival claim made as to the office of Muthavalli to the said wakf, to manage the day-to-day affairs of the said Wakf, thought it fit to appoint a person as a temporary Muthavalli and taking into consideration of the fact that the appellant in W.A(MD) No.866 of 2016, has got necessary qualification as 'Moulvi' in Bafiz and Fazil graduation, has appointed him as a temporary Muthavalli, under Section 63 of the Wakf Act, 1995, for the period from 25.06.2014 to 24.06.2017.

10. The said order was put to challenge by filing W.P(MD) No.12143 of 2014 and it was allowed in toto and challenging the legality of the same, these two Writ Appeals have been filed.

11. It is brought to the knowledge of this Court by the learned counsel appearing for the appellant in W.A(MD)No.865 of 2016 that the period of temporary Muthavalliship, also got expired and as such, the order has worked out itself and however, in the light of the allowing of W.P(MD)No.12134 of 2014 in toto, in the vacant post of Muthavalli in respect of the said wakf, the first respondent in both the writ appeals, has to be necessarily appointed and the said portion of the order may be set aside and liberty may be granted to the Wakf Board, to exercise their powers in accordance with the Wakf Act.

12. The learned counsel appearing for the appellant in W.A (MD)No.866 of 2016, would submit that the Wakf Board, vide impugned proceedings, dated 27.06.2014, has rightly taken into consideration the qualification of the appellant, appointed him as a temporary Muthavalli for the period from 25.06.2014 to 24.06.2017 and he has also successfully completed the said tenure and in the event of any future consideration, he should be given preference for appointing temporary Muthavalli and prays for appropriate orders.

13. Per contra, Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mr.S.Y.Masood, learned counsel appearing for the first respondent would submit that in respect of 'Syed Masood Nayagam Dharga', the appellant in W.A(MD)No.866 of 2016, is acting as Muthavalli and by way of succession and as such, it is not open to the contend that the first respondent/writ petitioner cannot continue in that capacity in respect of 'Naina Mohammed Peria Kuthba Pallivasal', Peria Street, Kadayanallur and would further contend that the appellant in W.A(MD)No.865 of 2016, is adopting double standard by placing reliance upon the finding rendered in O.S.No.138



of 1989 and since the learned Judge has taken into consideration the factual aspects and other materials, rightly reached the conclusion that till the consideration as to the appointment of permanent Muthavalli, the first respondent/writ petitioner may be continued to act as temporary Muthavalli and prays for dismissal of both the writ appeals with costs.

14. This Court has carefully considered the rival submissions and perused the materials placed before it.

15. A perusal of the materials would indicate that as against the judgment and decree dated 05.08.1983 made in O.S.No.138 of 1989, A.S.No.1024 of 1993 has been preferred and the same is pending adjudication on the file of this Court.

16. Attention of this Court was also invited to the order dated 23.01.2014 made in M.P(MD)No.1 of 2014 in C.R.P(MD)No.324 of 2005 and the learned Judge in the interim order passed, in Paragraph Nos.8 and 9, has observed as follows:

"8.A perusal of the Wakf Board order, dated 09.02.1985, with regard to the dispute between the petitioner's father and his brother would show that the Wakf Board held that the Rule of succession is hereditary. If the petitioner's father, who acted as Muthavalli, as per the Wakf order dated 09.02.1985, the petitioner is also permitted to continue as Muthavalli by hereditary ship. Once he is allowed to continue as Muthavalli, the question of recognition or approval under Section 63 of the Wakf Board is only consequential. Therefore, there is no need for the petitioner to seek for approval of the Wakf Board under Section 63 of the Act and he is entitled to continue the proceedings in the place of his father.

9.Moreover, a resolution has been filed before this Court stating that the petitioner has been appointed as the President of Jamath by resolution, dated 01.06.2013 as per by law in clause (iv) of the Jamath and therefore on both account, the petitioner has to be brought on record and accordingly, this petition is allowed and in view of the above findings, the proceedings cannot abated."

17. It is to be noted at this juncture that the Tamil Nadu Wakf Board is not a party either in O.S.No.138 of 1989 or in C.R.P (MD)No.324 of 2005 and it is also not in dispute that the appellant in W.A(MD)No.866 of 2016, is continuing as a Muthavalli by way of succession in respect of 'Syed Masood Nayagam Dharga', Therku Ayyapuram, Kadayanallur.



18. The impugned resolution of the Tamil Nadu Wakf Board, dated 21.08.2013, also did not indicate that there was a mismanagement or other misdeeds on the part of the first respondent/writ petitioner.

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19. Be that as it may, now the office of Muthavalliship in respect of 'Naina Mohammed Peria Kuthba Pallivasal', Peria Street, Kadayanallur, falls vacant on account of the expiry of the tenure of the appellant in W.A(MD)No.866 of 2016.

20. This Court taking into consideration of the fact that the appellant in W.A(MD)No.866 of 2016 is acting as Muthavalli in respect of 'Syed Masood Nayagam Dharga', Therku Ayyapuram, Kadayanallur, is of the considered view that till the proceedings takes place, as to the appointment of permanent Muthavalli, in respect of 'Naina Mohammed Peria Kuthba Pallivasal', Peria Street, Kadayanallur, the first respondent in both the Writ Appeals/writ petitioner, is to be continued as temporary Muthavalli in respect of 'Naina Mohammed Peria Kuthba Pallivasal', Peria Street, Kadayanallur and it is also made clear that it is also subject to the result of A.S.No.1024 of 1993.

21. This Court would also make it clear that de horse this order, it is always open to the appellant in W.A(MD)No.865 of 2016, namely, Tamil Nadu Wakf Board, to exercise its powers in terms of the Wakf Act, 1995 and the Rules framed thereunder, as to the office of Muthavalliship in respect of 'Naina Mohammed Peria Kuthba Pallivasal', Peria Street, Kadayanallur as well as 'Syed Masood Nayagam Dharga', Therku Ayyapuram, Kadayanallur.

22. Both the Writ Appeals are dismissed, subject to above observations. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffar Sarango Street,
Seethakudi Nagar,
Chennai - 600 001.



+1cc to M/S.S.Y.Masood, Advocate SR.No. 57150
+1cc to M/S.Ajmal Associates, Advocate SR.No. 57180

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JUDGMENT MADE IN
W.A(MD)Nos.865 and 866 of 2016and
C.M.P(MD)Nos.5169 and 5170 of 2016
and
C.M.P(MD)Nos.11561 and 11562 of 2017
22.03.2018

pm

JM/SKN RSK/SAR 1/10.04.2018/7P/4C